HIGH COURT OF ORISSA
CUTTACK

GOVERNMENT APPEAL NO.9 OF 1990

From the judgment dated 29.03.1989 passed by Sri K.C. Mohapatra, Sessions Judge, Sundargarh in Criminal Appeal No.44 of 1988 reversing the judgment dated 14.07.1988 passed by Sri A.K.Senapati, Addl. C.J.M.-cum- J.M.F.C., Rourkela in 2(c) C.C. No.1 of 1985 (T.R. No.434 of 1987).

State of Orissa ..... Appellant

Versus

Ramachandra Saha & another ..... Respondents

For appellant : Addl. Standing Counsel

For respondents : M/s. D.S.Misra & S.Behera

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 31.07.2006

PRADIP MOHANTY,J. This appeal is directed against the judgment and order dated 29.03.1989 passed by the learned Sessions Judge, Sundargarh in Criminal Appeal No.44 of 1988 setting aside the judgment of conviction and sentence of the trial court and acquitting the respondent of the charge under Sections 3(a) of the Railway Property (Unlawful Possession) Act.

2. The case of the prosecution is that at the relevant time the accused-respondents were employees under the South Eastern Railway and were attached to Bandomunda Railway Yard. On 19.12.1984 the R.P.F. staff proceeded towards Receipt Yard of the Bandomunda Railway station

at about 10 a.m. for surprise checking. When they reached at the spot, they noticed that two persons were standing at the northern side of Wagon No.636448 and were engaged in extracting mustard seeds from the wagon. They immediately rushed to those two persons and apprehended the accused-respondent Ram Chandra Saha. 15 K.Gs. of mustard seeds were seized from his possession. The other accused-respondent Ramaprasad Sinha was subsequently arrested on the statement of accused Ram Chandra Saha. After completion of inquiry, prosecution report was submitted against the two accused-respondents for commission of offence under Section 3(a) of the Railway Property (Unlawful Possession) Act.

3. The plea of the accused-respondents was complete denial of their complicity in the alleged crime. Their specific plea was that their signatures were obtained by the Enquiring Officer after assaulting them.

4. In order to prove its case, the prosecution examined as many as ten witnesses and relied on 13 exhibits. The respondents examined none in support of their plea.

5. Learned Addl. Chief Judicial Magistrate-cum-J.M.F.C., Rourkela, who tried the case, by his judgment dated 14.07.1988 in 2(c) C.C. No.1 of 1985/Trial No.434 of 1987 convicted the accused-respondents under Section 3(a) of the Railway Property (Unlawful Possession) Act and sentenced them to undergo rigorous imprisonment for two years. Against the said judgment, the accused-respondents preferred an appeal before the learned Sessions Judge, Sundargarh, which was registered as Criminal Appeal No.44 of 1988 and the learned Sessions Judge, after hearing the parties, vide the impugned judgment acquitted the accused-respondents of the above charge by holding that the finding of the trial court that the property in question was seized from the possession of the accused-respondents was not correct and that there was no proper appreciation of evidence on the score.

6. Perused the LCR, the statement of the witnesses and the judgments of the courts below. In the instant case, some mustard seeds are

said to have been seized from the accused-respondents. P.W.8 in his evidence admitted that the said mustard seeds were of common variety and available in the open market. The sample mustard seeds seized including the mustard seeds said to have been seized from the accused-respondents were not examined by any expert nor produced in court. There was every possibility of mustard seeds falling through the gap of flap door. There is no material before this Court that the same mustard seeds are railway property and removed from the Railway wagon.

P.Ws.1, 6 and 8 are the R.P.F. personnel. They stated in their evidence that the accused-respondents were possessing 15 KGs of mustard seeds. They are all official witnesses and highly interested for successful termination of the prosecution case. P.W.8 has only stated with regard to extraction of the mustard seeds from the wagon. No independent witness has been examined by the prosecution to support the version of the official witnesses. Prosecution has also failed to produce the material objects before the court at the time of trial and no explanation whatsoever has been given for non-production of the same. P.Ws.7 and 10, who are also the employees of the Railway, do not in any way implicate the respondents. Although the occurrence took place in broad daylight, i.e., at about 10 a.m., the prosecution has not been able to examine a single independent witness.

8. For the above reasons, this Court is of the considered opinion that no infirmity or illegality has been committed by the learned Sessions Judge in acquitting the accused-respondents. There is thus no merit in this Government appeal, which is accordingly dismissed.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
July 31, 2006 / ***Samal***